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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1230

DISTRICT OF COLUMBIA, *Petitioner*,

v.

EQUITABLE LIFE INSURANCE COMPANY, *Respondent*.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PRINTING DIVISION—D. C. GOVERNMENT

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Petitioner, the District of Columbia, a municipal corporation, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in these cases on January 17, 1966.

OPINIONS BELOW

The decision of the District of Columbia Tax Court and its findings of fact and opinion are not officially reported, but are printed in Appendix A hereto, *infra* p. 1a. The opinion of the division of the Court of Appeals rendered on

January 17, 1966, has not been officially reported, but is printed in Appendix B hereto, *infra* p. 7a.

JURISDICTION

The decision of the District of Columbia Tax Court was entered April 8, 1965, Appendix A, p. 1a. The judgment of the Court of Appeals was entered January 17, 1966. Appendix C, *infra* p. 9a. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and D. C. Code, 1961 edition, Section 47-2404.

QUESTIONS PRESENTED

Where Equitable Life Insurance Company, solely for the purposes of investment and not for its own use, purchased a printing press of a value of approximately $300,000 and leased it to a commercial printer in the District of Columbia, and thereafter claimed exemption of the printing press from District personal property taxes, the questions presented are:

1. Should not the provision of the District of Columbia statute taxing an insurance company's net premium receipts, that the tax shall be "in lieu of all other taxes", be considered as referring only to the property of the company held for the transaction of its business of insuring, so as to exclude from exemption or commutation of taxes a printing press owned by it and leased to another corporation.

2. Even if the provision of the taxing statute that the tax on net premium receipts shall be "in lieu of all other taxes", is construed to apply as well to all property which by the terms of its charter it is at liberty to acquire, as to property held for the transaction of its insurance business, is not the commutation of taxes or exemption so limited that it does not extend to tangible personal property which the company acquired under authority of a *subsequent* act of Congress in which is found no commutation or exemption provision.

STATUTES INVOLVED

The pertinent sections of the acts of Congress relating to insurance companies and personal property taxation in the District of Columbia, §§ 35-105, 35-535(6) (c), 47-1207, and 47-1806 (and to a lesser degree §§ 35-204, 35-404, 35-501(d), 47-1207, 47-1208, 47-1502(d)(9), 47-1554(g), and 47-1801) of the D. C. Code 1961, are set forth in Appendix D, *infra* pp. 9a-17a.

STATEMENT OF THE CASE

The Congress imposed a 2% premium tax on insurance companies in the District of Columbia and provided that, with certain exceptions, the tax should be "in lieu of all other taxes". With certain exceptions not here relevant, the Congress also imposed a tax on all tangible personal property in the District of Columbia.

Respondent, Equitable Life Insurance Company (hereinafter Equitable), brought proceedings in the District of Columbia Tax Court for a refund of personal property tax deficiences for the fiscal years 1962-1965, assessed by petitioner, District of Columbia (hereinafter District), pursuant to the District's personal property tax act (D. C. Code 1961, §§ 47-1201 *et seq.*). (J. A. 1-8.)

Equitable is a domestic life insurance corporation which owns a printing press of a value of approximately $300,000 which, under the authority of a 1960 statute, it purchased as an investment and leased to a printing company in the District of Columbia for a ten-year term at a fixed rental. Under the terms of its agreement with its lessee, Equitable has received an annual rental of 6½% of the money invested by it in the printing press. At all relevant times Equitable, as required by §§ 35-105 and 47-1806 of the D. C. Code 1961, had paid to the District as taxes a sum of money equal to 2% of its net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia.

In its opinion, but not as a finding of fact, the District of Columbia Tax Court stated that the printing press was necessary for Equitable's business as an insurance company. During the trial, however, the Tax Court made repeated statements demonstrating its view that the printing press has no relation to the insurance business and is not needed in the operation of the company. Moreover, Equitable's attorney told the Tax Court that he had "no facts" to show any such relationship.[1] And none were adduced. (R. *passim.*)

Following a decision of the Tax Court reversing the action of the District in assessing the taxes, on the ground that, under the statute providing a tax on net premium receipts of insurance companies, Equitable is not liable for personal property taxes on its printing press, the District appealed

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[1] "THE COURT: You dont think that the fact that this property has no relation to the insurance business has any effect?" (J. A. 11.)

* * *

"THE COURT: I thought you said you were going to show that these people, this machine, was related to your business.

* * *

"THE COURT: I thought you were talking about fact, not law.
"MR. ALTMANN: Just law, your Honor, I am sorry.
"THE COURT: Are these all the facts that you want?
"MR. ALTMANN: Yes, your Honor.
"THE COURT: All right. *I thought you told me that the ownership of the printing press had some relation to your business as an insurance company and that you were going to show it.*
"MR. ALTMANN: *I misunderstood you and misspoke myself,* your Honor.
"THE COURT: I asked you a question whether or not you thought *the fact that this printing press was not related to your business,* I mean *to the petitioner's business as an insurance company,* would have any effect upon the outcome or what [the] outcome of this case ought to be and you said well you were going to show that the printing press had some relation to the insurance company business.
"MR. ALTMANN: I meant by that by reciting the District of Columbia investment statutes for insurance companies, your Honor.
"THE COURT: All right. That is law.
"*I was talking about facts.*
"MR. ALTMANN: *No; I have no facts.* (J. A. 13-14.) (Emphasis supplied.)

* * *

"THE COURT: [*T*]*hat is what troubles me in this case. This equipment is not needed in the operation of the insurance company.* * * *

* * *

"THE COURT: * * * *The use of the press has no relation to the insurance business.*" (J. A. 21.) (Emphasis supplied.)

to the United States Court of Appeals for the District of Columbia Circuit. A division of that Court affirmed the decision of the Tax Court except as to the recovery of interest on the refunds, regarding which the parties had stipulated both in the Tax Court and in the Court of Appeals.

BASIS FOR JURISDICTION IN THE LOWER COURTS

These proceedings were commenced by Equitable in the District of Columbia Tax Court under § 47-2403, D. C. Code 1961. The District, pursuant to § 47-2404, D. C. Code 1961, perfected appeals to the Court of Appeals for the District of Columbia Circuit.

REASONS FOR GRANTING THE WRIT

The Court of Appeals has.

(a) In conflict with applicable decisions of this Court, erroneously construed the statute taxing net insurance premium receipts.

(b) Erroneously construed the statute taxing net insurance premium receipts so as to affect every insurance company, domestic, foreign, and alien, authorized to engage in business in the District, and to permit them to invest now in personal property almost without limitation of kind or quantity[2] and yet be exempt from District of Columbia personal property taxes.

Impact of the Decision

If allowed to stand, this decision will have an important direct effect on the District of Columbia, for undoubtedly the decision is already known of nation-wide by insurance

[2] Section 35-535 of the D. C. Code does limit domestic insurance company investments to fifteen classes of intangible investments and to equipment and machinery, and there is a provision that no insurance company "shall invest an amount in excess of 2 per centum of its admitted assets in * * * equipment or machinery leased or to be leased to any one corporation", but (aside from the practical need for some liquid assets) 100 per centum of a domestic insurance company's assets could be invested in equipment or machinery leased to others.

companies[3] for its holding that the District is a tax-free haven for investment in personal property if an insurance company pays even a nominal amount of tax on District of Columbia insurance premiums. If not reversed, insurance companies will be permitted to invest tax free in the District of Columbia in, for example, office equipment, electronic equipment, including computers, railroad rolling stock, construction equipment, and, indeed, equipment and machinery of every kind and description.[4] Such freedom of investment without paying any tax on the return therefrom can be expected to drive out of the business all other companies in the District engaged in leasing every type of machinery or equipment. The many existing business so engaged are subject to District personal property taxes and cannot maintain their position against tax-free competitors. Moreover, those now using their own personal property in their businesses in the District will find it to their economic advantage to sell their equipment to insurance companies who, free from the payment of personal property taxes thereon, could lease it back to its former owners at reduced rates. For this situation to obtain, it should be clearly shown (as it has not been) that Congress intended such a result. Of far greater importance, however, is the national impact.

To the extent that the decision below does not serve as a precedent for similar decisions throughout the country, it would act as a magnet to draw to the District tax-free investments to the detriment of investment in other jurisdictions and also to the detriment of tax revenue in those other jurisdictions.

Many states, however, have provisions in their insurance

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[3] See, *e. g.*, *American Life Convention Legal Bulletin*, Vol. 94, No. 2, Feb. 1966, p. 25.

[4] The District of Columbia personal property tax base is composed of three groups: (1) inventories; (2) supplies; and (3) furniture, fixtures, machinery and equipment. The property subject to tax in the third class is valued at $41,750,000 and produces 41%, or $4,192,000 annually, of all District personal property tax revenues.

and other tax laws under which a certain tax is imposed "in lieu" of all other taxes. Heretofore such statutes have been construed—in accord with the decisions of this Court—as not providing tax immunity for all property.[5] Should, contrary to the controlling decisions of this Court, the decision below be permitted to stand and be followed by state courts, the effect of this Court's decisions on state statutes generally will be substantially lost and the tax revenues of state and local governments consequently decreased.

In this respect, this case may be likened to *General Motors Corporation* v. *District of Columbia*, 280 U. S. 553 (1965), where this Court recognized that, "* * * at times application of the District Code has an impact not confined to the Potomac's shores, but reaching far beyond. * * *"

A. The "in lieu" provision applies only to property held for transaction of business of the company.

Sections 35-105 and 47-1806 of the D. C. Code provide that, with certain exceptions, the insurance premium tax thereby imposed shall be "in lieu of all other taxes". Equitable seeks to use the "in lieu" provision to shelter from District personal property taxation a printing press of the value of $300,000, which it bought as an investment and leased to a District of Columbia printing company for a ten-year term at a fixed rental.

Ford v. *Delta and Pine Land Co.*, 164 U. S. 662 (1897) construed an equally broad exemption statute. The statute there provided that "* * * *all the property* and effects of said company *shall be exempt* until said road is completed. *Provided,* said road is commenced within two years and completed within ten years from and after passage of this act." 164 U. S., at 665 (emphasis supplied).

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[5] See, for example, the decisions of eight states at note 9, *infra*, construing state "in lieu" statutes in accord with the decisions of this Court. See in addition the decisions of the five states cited by this Court in *Ford* v. *Delta and Pine Land Co.*, 164 U. S. 662, 667 (1897), *infra* p. 8.

Notwithstanding the breadth of the Mississippi exemption statute, unqualified except for the time imitations, this Court held in *Ford* that the railroad property was *not* exempt under the statute for two reasons:

(1) such an exemption is to be construed as referring only to property held for the transaction of the business of the company, and

(2) even if rule (1) were to be disregarded, such an exemption does not extend to property acquired under a *subsequent act* of the legislature in which is found no exemption clause.

This Court's holding on the first of these two points was as follows:

> "It has been frequently decided that a general exemption of the property of a corporation from taxation is to be construed as referring only to the property held for the transaction of the business of the company. *Ramsey County* v. *Chicago, Milwaukee &c. Railway,* 33 Minnesota, 537; *Todd County* v. *St. Paul, Minneapolis &c. Railway,* 38 Minnesota, 163; *Illinois Central Railroad* v. *Irvin,* 72 Illinois, 452; *In re Swigert,* 119 Illinois, 83; *State* v. *Mansfield Commissioners;* 23 N. J. Law, 510; *State* v. *Newark,* 25 N. J. Law, 315; *Vermont Central Railroad* v. *Burlington,* 28 Vermont, 193; *Railroad Company* v. *Berks County,* 6 Penn. St. 70; *Worcester* v. *Western Railroad,* 4 Met. 564; *Tucker* v. *Ferguson,* 22 Wall. 527; *Bank* v. *Tennessee,* 104 U. S. 493, 497. In this latter case, after referring to several of the authorities just cited, it was said: 'The doctrine declared in them, that the *exemption* in cases like the one in the charter before us *extends only to the property necessary for the business of the company,* is founded in the wisest reasons of public policy. *It would lead to infinite mischief if a corporation, simply by investing its funds in property not required for the purpose of its creation, could extend its immunity*

> *from taxation, and thus escape the common burden of government.'* " 164 U. S., at 667 (emphasis supplied).

Respondent's business is insurance, specifically life insurance. Insurance handbooks,[6] as well as District of Columbia statutes,[7] demonstrate the truism that the business of an insurance company is insurance. That the business of insurance does not include the purchase of a printing press at a cost of approximately $300,000 and the leasing of it to a commercial printing company was recognized by the District of Columbia Tax Court during the proceedings.[8]

From the materials set forth in footnotes 6-8, and particularly from the statutes cited in footnote 7, it is evident that, when the Congress enacted the "in lieu" statutes, it visualized the function of insurance companies in the District to be the writing of policies of insurance and not the operation of other commercial ventures. Thus, under *Ford* v. *Delta and Pine Land Co., supra,* the "in lieu" provisions apply only to the property held for the transaction of Equitable insurance business. Its printing press is not held for that purpose and it is, accordingly, subject to District of Columbia personal property taxes.

Recognition of the propriety of classification with respect to the taxation of insurance companies has recently been restated by this Court in the following words:

> " 'While guaranteed exemptions must be strictly observed, this obligation is not inconsistent with reasonable classification designed to subject all to the payment of their just share of a burden

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[6] ANDERSON, VANCE ON INSURANCE (3d ed., 1951) § 1; CROBAUGH, HANDBOOK OF INSURANCE, 778 (1931).

[7] See D. C. Code 1961, §§ 35-105, 35-204, 35-404, and 35-501(d) in Appendix D, pp. 9a-11a *infra.*

[8] See n. 1, supra.

fairly imposed.'" *United States* v. *Atlas Life Ins. Co.*, 381 U. S. 233, 246 (1965), quoting *Denman* v. *Slayton*, 282 U. S. 514, 519 (1931).

In *Atlas* the Court discussed the question whether it is proper to tax one insurance company because it invested in a certain kind of property while another such company is not taxed because it invested in a different and exempt kind of property. The Court stated:

> "It is said, however, that a company investing 'idle' assets in municipal bonds and thereby adding exempt interest to its income will pay more tax, and at a higher rate per dollar of taxable income, than if it had not made the additional investment at all. Likewise, it is claimed, two companies having the same amount of investment in taxable securities and the same amount of commitments to policyholders, but one having some municipal securities in addition, will have a different tax bill, the latter paying more tax and at a higher rate because of the ownership of the bonds. But insurance companies accumulate funds to invest and they must, and do, invest. Their choice is not between investing and not investing at all but between investing in one kind of securities or another." 381 U. S., at 250.

Under § 47-1207 of the D. C. Code only *tangible* personal property is subject to taxation. There is no District of Columbia tax on intangible personal property. Obviously, Equitable could have invested its funds in intangible rather than in tangible personal property. Thus, in the words of *Atlas*, Equitable's "choice is not between investing or not investing at all, but between investing in one kind of • • • [property] or another."

Many courts in addition to this Court have held that a statute providing that a specified tax or payment in lieu

of all taxes does not give an unlimited exemption and that certain taxes may still be imposed.[9]

As this court has often stated, exemptions from taxation are to be strictly construed in favor of the public and against those claiming exemption.[10] Furthermore, exemptions will be strictly construed as to the taxes included within the exemption.[11] "* * * [W]here there is room for reasonable doubt as to total or partial exemption, the latter alone should be recognized."[12]

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[9] *Southland Inv. Co.* v. *Jefferson*, 171 La. 106, 129 So. 722 (1930) (personal property tax); *Pittman* v. *Housing Authority of Baltimore City*, 180 Md. 457, 25 A. 2d 466, 469-70 (1942) (deed recordation tax); *Whitcomb v. Ramsey County*, 91 Minn. 238, 97 N. W. 879 (1904) (real property tax); *County of Todd* v. *St. Paul M. & M. Ry.*, 38 Minn. 137, 36 N. W. 108, 110-11 (1888) (real property tax), writ of error dismissed 142 U. S. 282 (1892); *State ex rel. Attorney General* v. *State Tax Comm'n*, 50 N. M. 299, 58 P 2d 1204 (1936) (real and personal property taxes); *People ex rel. Westchester Fire Ins. Co.* v. *Davenport*, 91 N. Y. 574 (1888) (personal property tax); *Commercial Standard Ins. Co.* v. *Hixson*, 175 Tenn. 239, 133 S. W. 2d 493 (1939) (tax on business of insuring titles); *Millers' Mut. Fire Ins. Co.* v. *City of Austin*, 210 S. W. 825 (Tex. Civ. App. 1919) (provision that where insurance company pays ½% tax on gross premiums "no other tax shall be required", *held* not to preclude ad valorem taxes on property); *Milkaukee Electric Ry. & Light Co.* v. *Wisconsin Tax Comm'n*, 207 Wis. 523, 242 N. W. 312 (1932) (property tax on motor vehicles). See also the Illinois, Minnesota, New Jersey, Pennsylvania, and Vermont decisions cited by this Court in *Ford* v. *Delta and Pine Land Co.*, 164 U. S. 662, 667 (1897), quoted *supra* at pp. 8-9. *Cf. General American Life Ins. Co.* v. *Bates*, 363 Mo. 143, 249 S. W. 2d 458 (1952) (provision that 2% tax on insurance premiums was in lieu of all taxes upon intangible property, *held* unconstitutional).

[10] *Helvering* v. *Northwest Steel Mills*, 311 U. S. 46, 49 (1940); *Seton Hall College* v. *South Orange*, 242 U. S. 100, 106 (1916); *J. W. Perry Co.* v. *Norfolk*, 220 U. S. 472, 480 (1911); *Yazoo & Mississippi Ry.* v. *Adams*, 180 U. S. 1, 22 (1901) ("Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appears to have been the intent of the legislature. Public policy in all the States has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational and municipal purposes; but this list ought not to be expanded except for every substantial reasons; and while, as we have held in many cases, legislatures may in the interest of the public contract for the exemption of other property, such contract should receive a strict interpretation, and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too much to say that courts are astute to seize upon evidence tending to show * * * that such exemptions were not originally intended * * *.")

[11] *Mayor and City Council of Baltimore* v. *Williams*, 61 F. 2d 374 (4th Cir. 1932), reversed on other grounds, 289 U. S. 36 (1933); *Kluczynski* v. *Hospital Service Corp. of Western N. Y.*, 282 App. Div. 276, 123 N. Y. S. 2d 183 (1953).

[12] *Millsaps College* v. *Jackson*, 275 U. S. 129, 132 (1927) (city tax upheld on property owned by tax-exempt college and rented out with rental being used solely for college operating expenses).

B. The exemption does not extend to property acquired under a *subsequent* act containing no exemption.

In *Ford* v. *Delta and Pine Land Co., supra,* the Court said further with respect to the Mississippi exemption statute:

> "* * * [I]t is clear that *even if the exemption is properly construed as applying not only to the property necessary for the business of the railroad company but also to all other property which by the terms of its charter it was at liberty to acquire, it does not extend to property which, not necessary for its business, it acquired under the authority of a subsequent act of the legislature, in which is found no exemption clause.* The act of 1867, reviving the charter, authorized the corporation to receive payment of subscriptions to its capital stock in lands, provided the lands were within five miles of the line of its road; and if the exempting clause can be construed to apply to property other than that used in the business of the company it would be limited to property which by the charter, as it then stood, it was authorized to acquire. Subsequently thereto, and in 1890, it was authorized to receive in the way of subscription to its capital stock lands lying anywhere within the limits of the State, and it was under this authority that it took title to the lands in question. Now, in this act of 1870 is no mention of any exemption, nothing to suggest that the legislature intended that this roving authority to take title to lands carried with it the right to withdraw all the lands thus taken from the burdens of taxation, and it would be clearly in violation of the accepted rule of construction in respect to contracts of exemption to extend the provisions of the exempting clause in the acts of 1859 and 1867 to property, the right to acquire which was conferred solely by the subsequent act." 164 U.S., at 668-69 (emphasis supplied.)

Under the foregoing, even if the commutation or exemption were construed to apply not only to the property held for the transaction of the insurance business, but also to all other property which by the terms of its charter it was at liberty to acquire, the commutation or exemption "does not extend to property which, not necessary for its business, it acquired under the authority of a subsequent act of the legislature, in which is found no exemption clause." A printing press not used in the insurance business but leased to a commercial printing concern is manifestly not "necessary" for the insurance business.[13] Under *Ford* it becomes important to determine whether the statute authorizing investment in equipment or machinery represents a "subsequent act" in relation to the "in lieu" provisions.

As the basis for the exemption or commutation of taxes, both the Tax Court and the Court of Appeals relied on the "in lieu" provisions of §§ 35-105 and 47-1806 of the D.C. Code 1961 (Appendices A and B *infra* pp. 1a and 7a), the sources of which were, respectively, (1) acts of 1901, 1902, and 1937,[14] and (2) acts of 1937 and 1938.[15] Both courts also bottomed their decisions upon § 35-535 (6) (c) of the D.C. Code 1961, cited by Equitable for the proposition that it had legal authority for investing its funds in the subject printing press leased to a commercial printing firm (Appendices A and B, *infra*, pp. 1a and 7a). Subsection 6 (c) was added to the Life Insurance Act by a 1960 act.[16] Thus, the courts below relied on the Acts of 1901, 1902, 1937, and 1938 for exemption, and on

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[13] See the Tax Court's statements at trial, *supra* n. 1.

[14] The Act of March 3, 1901, 31 Stat. 1291, ch. 854, § 650, as amended by the Act of June 30, 1902, 32 Stat. 534, ch. 1239, and as impliedly amended by the Act of August 17, 1937, 50 Stat. 676, ch. 690, Title II, § 6 (D. C. Code 1961, § 35-105).

[15] The Act of August 17, 1937, 50 Stat. 676, ch. 690, Title II, § 6, as amended by the Act of May 16, 1938, 52 Stat. 358, ch. 223, § 2 (D. C. Code 1961, § 47-1806).

[16] The Act of September 8, 1960, 74 Stat. 864, Pub. L. 86-732, § 1(b) (D. C. Code 1961, § 35-535 (6)(c)).

the 1960 act for Equitable's authority to acquire the printing press. In the language of *Ford* v. *Delta and Pine Land Co., supra,* the 1960 statute is a "subsequent act of the legislature, in which is found no exemption clause." Under *Ford,* commutation or exemption does not extend to such property.

C. When Congress has intended to exempt insurance companies from District of Columbia taxes, it has so stated, as in the case of the District of Columbia Franchise Tax Acts of 1939 and 1947.

When Congress has intended to exempt insurance companies from the provisions of District taxing statutes, Congress has known how to do so. Witness the 1939 Income Tax Act [17] and the 1947 Income and Franchise Tax Act [18] of the District of Columbia, where Congress expressly provided that insurance companies which pay taxes on their premiums shall be exempt from District franchise taxes. If the "in lieu" provisions of §§ 35-105 and 47-1806 of the D.C. Code are complete, self-operating, and subject to no construction whatsoever, as held by the courts below, the Congress did a useless thing in the 1939 and 1947 taxing acts when it exempted insurance companies from the taxes imposed by those acts. Surely Congress is not to be presumed to have done a useless, nugatory act.

Section 47-1208 of the D.C. Code, which enumerates the exemptions from the District's personal property tax act, does *not* exempt personal property of insurance companies. Under *Ford* and under logic, the Equitable Life Insurance Co. is liable for District personal property taxes on its $300,000 printing press which it has leased to a commercial printer.

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[17] D. C. Code, 1961, § 47-1502(d)(9).

[18] D. C. Code, 1961, § 47-1554(g).

CONCLUSION

The District of Columbia Tax Court gave only cursory attention to this Court's decision in *Ford* v. *Delta and Pine Land Co.*, 164 U.S. 662, upon which petitioner District of Columbia has relied. The Court of Appeals made no mention of the case although it was fully briefed and strongly urged upon the Court of Appeals. As stated by this Court in *Ford*, "It would lead to infinite mischief if a corporation, simply by investing its funds in property not required for its creation, could extend its immunity from taxation, and thus escape the common burden of government." 164 U.S., at 667.

If this Court's opinions are to be over-ruled, even silently, the over-ruling should be done by this Court itself and not by lesser courts.

Moreover, Congress has not expressly exempted insurance companies from District of Columbia personal property taxes, as it has from District franchise taxes.

For the foregoing reasons, the petition for writ of certiorari in this case should be granted.

Respectfully submitted,

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APPENDIX A

DISTRICT OF COLUMBIA TAX COURT

Findings of Fact and Opinion

[as filed April 8, 1965]

The petitioner, in the above cases, complains of personal property taxes for the fiscal years ended June 30, 1962, 1963, 1964 and 1965, assessed upon a printing press which it bought as an investment, and which it leased for the purpose of obtaining income therefrom.

Findings of Fact

1.(a) The petitioner is a life insurance company, organized under the laws of the District of Columbia, with its principal office in the District.

(b) The petitioner is licensed to do life insurance business in the District of Columbia.

(c) For the fiscal years here involved, and for a long time prior thereto the petitioner paid the gross premium tax levied by the provisions of Sections 35-105 and 47-1806 of the District of Columbia Code, 1961 Edition.

2.(a) On July 1, 1961, 1962, 1963 and 1964, and for some time prior thereto, the petitioner was and still is the owner of a large printing press, which it purchased as an investment and for the purpose of leasing it in order to obtain revenue or income.

(b) Prior to July 1, 1961, the printing press was, and still is leased to Judd & Detweiler, Inc., a printing company for a ten-year term at a fixed rental, from which the petitioner receives an annual return of six and one-half

per centum of the amount of money invested in the printing press.

3.(a) On June 11, 1964,[1] the assessing authority of the District of Columbia assessed the petitioner a personal property tax on the aforesaid printing press for the fiscal years and in the amounts following:

Fiscal year ended June 30, 1962.....	$ 6,420.88
Fiscal year ended June 30, 1963.....	5,778.78
Fiscal year ended June 30, 1964.....	5,136.70
Total.....	$17,336.36

(b) On June 11, 1964, the petitioner paid the aforesaid personal property taxes.

4.(a) On August 31, 1964, the assessing authority of the District of Columbia assessed the petitioner a personal property tax on the aforesaid printing press for the fiscal year ending June 30, 1965, in the amount of $4,494.60.

(b) On September 29, 1964, the petitioner paid one-half of said tax in the amount of $2,247.30; and on November 12, 1964, paid the other half ($2,247.30).

Opinion

These two cases have been consolidated for hearing and disposition. They are appeals from the assessment of personal property taxes for four fiscal years, namely, those ending June 30, 1962, 1963, 1964 and 1965. The facts, briefly stated, are the following:

Some time prior to July 1, 1961, the beginning or on the tax day of the first of the fiscal years herein involved, the petitioner purchased for investment a large printing press with the intention or purpose of renting it and obtaining income therefrom. It rented the printing press to the printing firm, Judd & Detweiler, Inc., for a ten-year term, still in force, at a fixed rental which produced

[1] Through error the notices of assessment were dated "June 12,-64".

income equal to six and a half per centum on the amount invested in the press.

The assessing authority assessed the petitioner substantial personal property tax on the printing press for the four fiscal years in amounts totaling $21,830.96. The petitioner paid the taxes, and has appealed from the assessments, with a prayer for refund.

The taxes were invalid and must be cancelled with appropriate refund. The purchase of the printing press as an investment was proper. Section 35-535, District of Columbia Code, 1961 Edition, as far as here pertinent, reads as follows:

§ 35-535. *Investment of funds of domestic companies.*

A domestic company shall invest its funds only in——

* * *

(6) * * *

(c) Equipment or machinery for use in transportation, manufacturing, production or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however,* That no company shall invest an amount in excess of 2 per centum of its admitted assets in such equipment or machinery leased or to be leased to any one corporation. * * *

(June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 35; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12; June 19, 1948, 62 Stat. 480, ch. 503; July 19, 1954, 68 Stat. 494, ch. 546, § 1; Sept. 21, 1959, 73 Stat. 598, Pub. L. 86-329, § 1; Sept. 8, 1960, 74 Stat. 863-866, Pub. L. 86-731, § 1.)

A two per centum net premium tax is levied against insurance companies in the District of Columbia under two

sections of the Code (1961 Edition). They are Sections 35-105 and 47-1806. They are as follows:

35-105—*Statement of Business in the District of Columbia.*

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, *in lieu of all other taxes, except taxes upon real estate* and any license fees provided for in sections 35-1201 and 35-1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6.) *(Emphasis supplied.)*

47-1806—*Rates on Insurance Companies—Exceptions—Definitions—Marine Insurance Excluded*

All such companies, including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum

of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. *Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title. (Emphasis supplied.)*

The respondent's position is ably presented by counsel, but their argument indicates that they have overlooked the fact that investment of money received in premiums is an important element of the life insurance business. A life insurance company, in order to exist and pay benefits under the policies issued by it must invest its funds in property which produces income, whether tangible or intangible. The printing press which it purchased as an investment and which it leased to Judd & Detweiler, Inc. was necessary for its business as an insurance company. The decisions in the cases cited by counsel for the respondent are based upon the premise that the property involved was not necessary to the conduct or operation of the taxpayer corporation. Even the decision in the respondent's strongest authority, *Ford v. Delta and Pine Land Co.*, 164 U.S. 662, which, incidentally, dealt with "exemption", involved property not used by the taxpayer in conducting its business or not necessary thereto. That case does support the admission or concession that the rules relating to "exemption" and "commutation of taxes" are the same.

Section 35-535 of the District of Columbia Code (1961 Edition) was cited to show that the petitioner had the legal authority to invest its funds in the printing press.

What is more important is that the entire Section 35-535 shows what everyone knows,—that insurance companies must invest their funds so that income thereon will be obtained.

Keeping in mind the proposition, as stated by counsel for respondent, that "many of the principles of law relevant to exemptions from taxation are relevant to commutation of taxes", the personal property taxes must be held to be invalid and subject to cancellation under the decision of the United States Court of Appeals in *District of Columbia* v. *National Shrine of the Immaculate Conception,* 114 U.S. App. D.C. 296, 315 F.2d 42, since the purchase, ownership and leasing of the printing press was directly related to the function of the petitioner as a District of Columbia life insurance company.

For the reasons stated the Court holds as follows:

Docket No. 1952. That there were erroneously assessed against and collected from the petitioner, and must therefore be cancelled the personal property taxes for the fiscal years and in the amounts following:

Fiscal year ended June 30, 1962.....	$ 6,420.88
Fiscal year ended June 30, 1963.....	5,778.78
Fiscal year ended June 30, 1964.....	5,136.70
Total.....	$17,336.36

That the petitioner is entitled to a refund of the aforesaid amounts with interest thereon at the rate of 4 per centum per annum from June 11, 1964, to the date of the payment of the refund.

Docket No. 1959. That there was erroneously assessed against, and collected from the petitioner, and must therefore be cancelled, a personal property tax for the fiscal year ending June 30, 1965, in the amount of $4,494.60; and that the petitioner is entitled to a refund thereof with interest thereon at the rate of 4 per centum per annum on $2,247.30 from September 29, 1964, and on

$2,247.30 from November 12, 1964, to date of payment of refund.

Decision will be entered for petitioner.

Jo. V. MORGAN,
Judge

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Caption omitted]

Decided January 17, 1966

Before: WILBUR K. MILLER, Senior Circuit Judge, and DANAHER and LEVENTHAL, Circuit Judges.

PER CURIAM: Respondent, Equitable Life Insurance Company, is a domestic corporation which owns a printing press of a value of approximately $300,000 which the respondent had leased to a local printing company for a 10-year term at a fixed rental. Respondent under the terms of its agreement with its lessee has been receiving an annual rental of 6½ per centum of the money invested in the printing press. The tax authorities of the District of Columbia had assessed personal property taxes against the respondent on June 11, 1964 for the fiscal years ending June 30, 1962, June 30, 1963 and June 30, 1964. Those assessments are in issue in our case No. 19425. In like manner, personal property taxes had been assessed on August 31, 1964 for the fiscal year ending June 30, 1965, as to which identical issues are presented in our case No. 19426. The District of Columbia Tax Court had consolidated the respondent's petition for refunds for purposes of hearing and disposition.

The Tax Court held that domestic insurance companies are authorized to invest their funds in equipment or machinery for leasing to others in accordance with the

provisions of D. C. Code § 35-535(6)(c) (1961). Clearly, an insurance company is not only permitted to invest, but as a matter of economic necessity, it is bound to do so. See *United States* v. *Atlas Life Ins. Co.*, 381 U.S. 233, 247 (1965).

The Tax Court noted that a 2 per centum net premium tax is levied against insurance companies in the District of Columbia pursuant to D. C. Code §§ 35-105 and 47-1806 (1961). Accordingly, the Tax Court held that with certain exceptions, those sections of our Code provide that the 2 per centum premium tax shall be "in lieu of all other taxes." The tax measured by net premiums is plainly in lieu of any franchise tax measured by the income derived from the insurance company's investment in the printing press. We are likewise satisfied that the Tax Court correctly concluded that the personal property taxes for the fiscal years in suit had been erroneously assessed.

In view of the congressional intent as expressed in the cited sections of our Code, the District of Columbia is, in effect, asking the court to say that Congress should have provided some method of taxation other than that so clearly spelled out. As we observed in *District of Columbia* v. *National Shrine, Etc.*, 114 U.S.App.D.C. 296, 298, 315 F.2d 42, 44 (1963): "If the District is dissatisfied with the statute, its remedy is to apply to Congress for an amendment in accordance with its view of what the law ought to be."

Affirmed.[1]

---

[1] We do not direct the recovery of interest on the refunds in view of the stipulation filed in this court July 15, 1965 that if the decision of the District of Columbia Tax Court is affirmed, the judgment ordering refunds shall be without interest.

APPENDIX C

[Caption omitted]

On Petition for Review of Decision of the District of Columbia Tax Court.

Before: WILBUR K. MILLER, Senior Circuit Judge, and DANAHER and LEVENTHAL, Circuit Judges.

JUDGMENT

The District of Columbia Tax Court having held in two Decisions that personal property taxes in the total amount of $21,830.90 had been erroneously assessed against the respondent and having ordered a refund in that amount; the District of Columbia having sought review of the Tax Court's Decisions of April 8, 1965 in its docket No. 1952 as to an erroneous assessment of $17,336.36 and in its docket No. 1959 as to an erroneous assessment of $4,494.60; and this court having considered the arguments and the briefs of respective counsel and the record and the Decisions above mentioned; and being satisfied that there is no error,

It is ORDERED by the court that the Decisions of the Tax Court are affirmed in all respects except as to the award of a refund of interest as to which the parties had stipulated both in the Tax Court and in this court that if such refunds are to be made, interest is not to be awarded; provided however that the respondent shall be entitled to recover its costs in this court.

Per Curiam.

APPENDIX D

STATUTES INVOLVED

1. An Act to establish a code of law for the District; corporations; insurance companies; Act of March 3, 1901,

31 Stat. 1291, ch. 854, section 650, as amended by the Act of June 30, 1902, 32 Stat. 534, ch. 1329 (D.C. Code 1961, § 35-105):

> "STATEMENT OF BUSINESS IN DISTRICT OF COLUMBIA.—Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to one and one-half per centum[1] of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections six hundred and fifty-four and six hundred and fifty-five; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against said company, which, together with said taxes, shall be collected before said company shall be allowed to resume business."

2. An Act to require all insurance companies formed

[1] In D. C. Code 1961, § 35-105 "two per centum" has been substituted for "one and one-half per centum," which change the codifier has indicated was made to conform to the Act of August 17, 1937, 50 Stat. 676, ch. 690, title II, § 6, which has been codified as D. C. Code 1961, § 47-1806.

under the provisions of ch. XVIII of the code of law of the District of Columbia to maintain their principal offices and places of business within the District of Columbia, Act of May 17, 1932, 47 Stat. 158, ch. 189 (D.C. Code 1961, § 35-204):

> "'That any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an insurance business shall maintain its principal office within said District * * *.'"

3. An Act to regulate the business of life insurance in the District of Columbia, Act of June 19, 1934, 48 Stat. 1131, ch. 672, Ch. II, section 5, as amended by the Act of February 22, 1958, 72 Stat. 19, Pub. L. 85-334, § 1 (D.C. Code 1961, § 35-404):

> "'It shall be the duty of the Superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. * * * In each case the certificate shall be issued under the seal of the Superintendent, authorizing and empowering the company to transact the kind or kinds of business specified in the certificate * * *. No company shall transact any business of insurance in or from the District until it shall have received a certificate of authority as authorized by this section and no company shall transact any business of insurance not specified in such certificate of authority.'"

4. An Act to regulate the business of life insurance in the District of Columbia, Act of June 19, 1934, 48 Stat. 1143, ch. 672, Ch. III, section 1 (D.C. Code 1961, § 35-501 (d)):

> "ARTICLES OF INCORPORATION.—Any seven or more persons who desire to become in-

corporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

* * *

(d) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons.

* * * *"

5. An Act to regulate the business of life insurance in the District of Columbia, Act of June 19, 1934, 48 Stat. 1152, ch. 672, Ch. III, § 35, as amended by the Act of September 8, 1960, 74 Stat. 864, Pub. L. 86-731, § 1 (D.C. Code 1961, § 35-535(6)(c)):

"'Section 35. Investment of Funds of Domestic Companies.—A domestic company shall invest its funds only in——

* * *

(c) Equipment or machinery for use in transportation, manufacturing, production, or distribution, leased or to be leased to any solvent corporation domiciled within the United States or the Dominion of Canada, if the bonds or other evidences of indebtedness, if any, of such corporation are eligible as investments under the provisions of subsection (7) of this section: *Provided, however,* That no company shall invest an amount in excess of 2 per centum of its admitted assets in such equipment or machinery leased or to be leased to any one corporation.'"

6. Taxation of personal property, Act of July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 2:

"On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in this section), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there

shall be paid to the collector of taxes of the District of Columbia one and one-half per centum on the assessed value thereof."

The foregoing Act was amended by the Act of June 29, 1922, 42 Stat. 669, ch. 249, which provides in part:

"* * * [T]he Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation as will, when applied as aforesaid, produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed * * *."

The two foregoing provisions have been codified as follows (D.C. Code 1961, § 47-1207):

"On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in section 47-1208), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law."

7. Personal property exempt from taxation, Act of July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 10; April 28, 1905, 33 Stat. 564, ch. 1815; March 4, 1913, 37 Stat. 1006, ch. 150, § 10; September 1, 1950, 64 Stat. 576, ch. 836, § 3; May 18, 1954, 68 Stat. 112, ch. 218, §§ 605, 1001, 1002; September 4, 1957, 71 Stat. 606, Pub. L. 85-281, § 6 (D.C. Code 1961, § 47-1208):

"The following personal property shall be exempt from taxation.

"First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States

or of the District of Columbia and not conducted for private gain.

"Second. Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats, not held for sale or rent and not held for use or used in any trade or business. For the purposes of this section, the words 'household belongings' shall include all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words 'trade or business' shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit.

[Third. Repealed by the Act of May 18, 1954, 68 Stat. 112, ch. 218, § 1002.]

[Fourth. Repealed by the Act of May 18, 1954, 68 Stat. 112, ch. 218, § 1002.]

"Fifth. Works of art owned by a nonresident of the United States who is not a citizen of the United States lent without charge to the Trustees of the National Gallery of Art solely for exhibition without charge to the general public.

"Fifth. [Sixth.] Any motor vehicle or trailer registered in accordance with the provisions of title IV of the District of Columbia Revenue Act of 1937, as amended (title 40, ch. 1, D.C. Code, 1951 edition), and not comprising any part of the stock in trade of a merchant: *Provided,* That any motor vehicle or trailer comprising all or part of

the stock in trade of any merchant shall continue to be taxed as provided by law: *Provided further,* That special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law."

8. Exemption of insurance companies from District of Columbia Income Tax Act of 1939, Act of July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 2(d), as amended by the Act of February 2, 1942, 56 Stat. 42, ch. 33, § 1(a) (D.C. Code 1961, § 47-1502(d)(9)):

"(d) The following organizations shall be exempt from taxation under this title:

• • •

"(9) Banks, insurance companies, building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding companies, which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District of Columbia;

• • •"

The Act of July 16, 1947, 61 Stat. 331, ch. 258, Art. I, title I, § 1, repealed the foregoing Act of July 26, 1939, as amended, with respect to taxable years or portions thereof beginning on and after January 1, 1947.

9. Exemption of insurance companies from District of Columbia Income and Franchise Tax Act of 1947, Act of July 16, 1947, 61 Stat. 334, ch. 258, Art. I, title II (D.C. Code 1961, § 47-1554(g)):

"The following organizations shall be exempt from taxation under this Article:

• • •

"(g) Banks, trust companies, building and loan associations, insurance companies, companies which guarantee the fidelity of any individual or individuals, such as bonding companies, and companies which furnish abstracts of title or which insure titles to real estate, all of which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District.

* * *."

10. Taxes on insurance companies, Act of August 17, 1937, 50 Stat. 676, ch. 690, title II, § 6, as amended by the Act of May 16, 1938, 52 Stat. 358, ch. 223, § 2 (D.C. Code 1961, § 47-1806):

"All such companies,[2] including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title.

"'Net premium receipts or consideration received' means gross premiums or consideration received less the sum of the following:

"1. Premiums received for reinsurance assumed

[2] The phrase "All such companies" is a reference to the companies described in the Act of August 18, 1937, 50 Stat. 675, ch. 690, title II, § 1 (D. C. Code 1961, § 47-1801), which provides in part:

"'* * * every domestic, foreign, or alien company organized as a stock, mutual, reciprocal, Lloyd's, fraternal, or any other type of insurance company or association * * * shall obtain from the superintendent of insurance of the District of Columbia an annual license or certificate of authority, upon payment of a fee of $25 to the Collector of Taxes of the District of Columbia. * * *"

and premiums or consideration returned on policies or contracts canceled or not taken.

"2. Dividends paid in cash or used by the policyholders in payment of renewal premiums.

"Nothing contained in this section or in section 1 or 7 of this title shall apply with respect to marine insurance written within the said District and reported, taxed, and licensed under the provisions of the Act entitled An Act to regulate marine insurance in the District of Columbia, and for other purposes, approved March 4, 1922, as amended."

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SUPREME COURT, U. S.

FILED
MAY 24 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1230

DISTRICT OF COLUMBIA, *Petitioner*,

v.

EQUITABLE LIFE INSURANCE COMPANY, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

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---

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the Courts below are set forth in the Petition.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTIONS PRESENTED

The Respondent does not desire to restate the questions presented in the Petition for Writ of Certiorari. Respondent does not consider the statement of Questions Presented set forth in the Petition sufficient to justify the granting of the Writ of Certiorari.

STATUTES INVOLVED

The pertinent statutes are set forth in the Petition.

REASONS FOR DENYING WRIT

I

The Case Is a Matter of Local Law.

The decision of the United States Court of Appeals for the District of Columbia Circuit and the decision of the District of Columbia Tax Court is concerned solely with the construction of a local taxing statute.

The case at bar is limited to the District of Columbia and has no impact beyond the boundaries of the District of Columbia. The tax which the District of Columbia attempted to impose on Respondent was a tax on personal property situated in the District of Columbia.

II

The Case at Bar Creates No Conflict.

The decision of the Court of Appeals is not in conflict with the decisions of this Court and cannot be described as overruling the decisions of this Court. The decision in *Ford* v. *Delta and Pine Land Co.*, 164 U.S. 662, concerned the question as to whether or not an exemption from taxation contained in a corporation's charter releases the property so exempted from lia-

bility for assessments for local improvements. In *Ford* v. *Delta and Pine Land Co., supra,* the Court said:

> But, further and chiefly, the only exemption was from taxation, and it is a general rule of construction that a clause exempting from taxation does not release the property so exempted from liability for assessments for local improvements. *Sheehan Jr.* v. *The Good Samaritan Hospital,* 50 Missouri, 155; *Buffalo City Cemetery* v. *Buffalo,* 46 N. Y. 506; *Paterson* v. *Society for establishing Useful Manufactures,* 24 N. J. Law, 385; *State* v. *Newark,* 35 N. J. Law, 157. This question was considered in this court in *Illinois Central Railroad* v. *Decatur,* 147 U.S. 190. The exemption in that case was "from all taxes under the laws of this State," (Illinois) and it was held that that clause did not relieve the property from the burden of special assessments imposed to pay the cost of local improvements. The question was discussed at some length and the various authorities reviewed in the opinion then delivered. 164 U.S., at 670

The tax sought to be imposed by the District of Columbia is an *ad valorem* tax and not an assessment for a local improvement. It is inconceivable that *Ford* v. *Delta and Pine Land Co., supra,* can be said to control this case.

CONCLUSION

The case at bar concerns a purely local matter. The decision of the United States Court of Appeals is not in conflict with the decisions of this Court. For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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